
SENATE BILL No. 361

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-32-5-1.

Synopsis: Waiver of counsel by child. Prohibits a child from waiving counsel unless certain criteria are met. Provides that if a child waives counsel, the court shall: (1) appoint standby counsel for the child; and (2) offer the child counsel at each later stage of a court proceeding.

Effective: July 1, 2007.

Howard

January 11, 2007, read first time and referred to Committee on Judiciary.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE BILL No. 361

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 31-32-5-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. **(a) Except as**
3 **provided in subsection (b),** any rights guaranteed to a child under the
4 Constitution of the United States, the Constitution of the State of
5 Indiana, or any other law may be waived only:

6 (1) by counsel retained or appointed to represent the child if the
7 child knowingly and voluntarily joins with the waiver;

8 (2) by the child's custodial parent, guardian, custodian, or
9 guardian ad litem if:

10 (A) that person knowingly and voluntarily waives the right;

11 (B) that person has no interest adverse to the child;

12 (C) meaningful consultation has occurred between that person
13 and the child; and

14 (D) the child knowingly and voluntarily joins with the waiver;

15 or

16 (3) by the child, without the presence of a custodial parent,
17 guardian, or guardian ad litem, if:

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- 1 (A) the child knowingly and voluntarily consents to the
 2 waiver; and
 3 (B) the child has been emancipated under IC 31-34-20-6 or
 4 IC 31-37-19-27, by virtue of having married, or in accordance
 5 with the laws of another state or jurisdiction.
- 6 **(b) A court shall deny a child's waiver of counsel unless all of**
 7 **the following conditions are met:**
- 8 **(1) The waiver is made:**
 9 **(A) knowingly;**
 10 **(B) voluntarily;**
 11 **(C) in the presence of the child's attorney; and**
 12 **(D) after the child consults with the child's attorney.**
- 13 **(2) The waiver is executed on the record in open court.**
- 14 **(3) The waiver is in writing and written in the language**
 15 **primarily spoken by the child.**
- 16 **(4) The court conducts an inquiry and determines that the**
 17 **child understands that the child is waiving the right to**
 18 **counsel.**
- 19 **(c) If a child's right to counsel is waived under subsection (b),**
 20 **the court shall:**
- 21 **(1) appoint standby counsel for the child; and**
 22 **(2) offer the child counsel at each later stage of the court**
 23 **proceedings.**

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